

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

NATHANIEL O. BROWN,

Plaintiff,

v.

Cause No. 19-852

**UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN SERVICES**

233 North Michigan Avenue
Suite 600
Chicago, Illinois 60601

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW, Plaintiff Nathaniel O. Brown, by and through his attorneys Weilmuenster Keck & Brown, P.C., and for his Complaint for Injunctive Relief against the United States Department of Health and Human Services states as follows:

1. That this is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records regarding NPI/NPPES data.
2. That this court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) in so far as Plaintiff resides and maintains his principle place of business within the Southern District of Illinois.
3. That Plaintiff, Nathaniel O. Brown, is a duly licensed attorney practicing in the State of Illinois and is the requester of the records which Defendant is now withholding.
4. That Plaintiff has requested this information for use in actions arising under the

laws of the United States of America and Illinois currently pending in the Southern District of Illinois and the circuit court in the State of Illinois.

5. That good cause exists for the prompt release of the information as the items requested are easily identifiable and explicitly subject to FOIA.

6. That Defendant is an agency of the United States and has possession of the documents that Plaintiff seeks.

7. That in the regular course of business, Defendant maintains a database of healthcare practitioners, including the practitioners' names, specialties, practice addresses, and contact information. This data is commonly referred to as NPI/NPPES data or the NPI Registry.

8. That NPI/NPPES data is maintained and immediately accessible by search or download (the CMS website only includes certain years of NPI/NPPES data or current version of the NPI Registry).

9. That by e-mail on March 28, 2019, Plaintiff served a FOIA request on Defendant seeking:

- NPI/NPPES downloadable data regarding NPI No. 1881033710 containing FOIA-disclosable data, including but not limited to provider NPI, name, specialty (taxonomy), and practice address and contact information, on July 1, 2013;
- NPI/NPPES downloadable data regarding NPI No. 1881033710 containing FOIA-disclosable data, including but not limited to provider NPI, name, specialty (taxonomy), and practice address and contact information, on August 5, 2013;
- NPI/NPPES downloadable data regarding NPI No. 1881033710 containing FOIA-disclosable data, including but not limited to provider NPI, name, specialty (taxonomy), and practice address and contact information, on March 31, 2015; and
- NPI/NPPES records containing FOIA-disclosable data, including any and all edits, modifications, updates, and/or changes, regarding NPI No. 1881033710 from June 25, 2013, to December 31, 2018.

(Please see Plaintiff's FOIA request attached hereto as Exhibit 1.)

10. That Plaintiff's FOIA request was specifically limited to data regarding a single NPI number, or individually identifiable healthcare practitioner as it appeared on specific dates.

11. That on April 2, 2019, Defendant served correspondence on Plaintiff acknowledging receipt of the FOIA request on March 28, 2019. The correspondence further claims that

“unusual circumstances, as defined by Federal FOIA Regulations, may impact [Defendant's] ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous amount of records that must be located, compiled, transferred to this office, and reviewed.”

(Please see the correspondence attached hereto as Exhibit 2.)

12. That Defendant's correspondence further included reference numbers to allow Plaintiff to check the status of his FOIA request.

13. That throughout the pendency of this FOIA request, the status remained with an “undetermined” projected date of response.

14. That Plaintiff has made multiple efforts to obtain further status regarding the status of his FOIA request, including telephone calls and correspondence; however, Plaintiff has never received any response to these efforts. (Please see the correspondence attached hereto as Exhibit 3.)

15. That pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has exhausted his administrative remedies with respect to this request given that the agency failed to comply with the applicable time limit proscribed by 5 U.S.C. § 552.

16. That Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendant's denial of such access.

WHEREFORE, Plaintiff respectfully requests this Court:

- (1) Order defendant to provide access to the requested documents;
- (2) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (3) Award Plaintiff's costs and attorney's fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as may deem just and proper under the circumstances.

Respectfully Submitted,

WEILMUNSTER KECK & BROWN, P.C.

BY: /s/ Frederick W. Keck

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